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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,975	01/22/2004	Brian J. Cox	14395-0013	7891
7590 05/30/2007 STOUT, UXA, BUYAN & MULLINS LLP 4 VENTURE SUITE 300 IRVINE, CA 92618			EXAMINER SEVERSON, RYAN J	
			ART UNIT 3731	PAPER NUMBER
			MAIL DATE 05/30/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/763,975	Applicant(s) COX, BRIAN J.	
	Examiner Ryan Severson	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-43 is/are pending in the application.
- 4a) Of the above claim(s) 29-39, 42 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-28, 40 and 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of species 10 in the reply filed on 19 March 2007 is acknowledged. The traversal is on the ground(s) that there would be no undue burden on the examiner if the election of species requirement were not made. This is not found persuasive because each of the 3 embodiments that are represented in the claims have mutually exclusive characteristics. For example, the species in figures 6-9 show a woven patch configuration, the species in figures 10-12 shows a curved or arced configuration, and the species in figures 22-23 shows an intra-aneurysm device, whereas the other two are devices placed outside the aneurysm. A search for any one of the three embodiments would not seek out the same prior art that would be applied against any of the other embodiments. The requirement is still deemed proper and is therefore made FINAL.

2. Claims 29-39, 42, and 43 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 19 March 2007.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. **Claims 23-28, 40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deem et al. (6,231,597).** Deem et al. (hereinafter Deem) reference discloses the device substantially as claimed (see patent).

6. Regarding claims 23 and 40, Deem discloses a device that is a support structure (see figure 4) that is sized for placement at an aneurysm (see figure 11B). The support structure has a bridge portion or occlusion region (15, see figure 1) that spans the neck of the aneurysm (see figure 11B). The support structure has an open configuration (see figure 4). The bridge or occlusion portion includes a reactive material (102) that helps promote clotting (see column 5, lines 49-55), which restricts flow of blood into the aneurysm. However, the embodiment of Deem described above does not disclose the support structure is non-tubular. Attention is drawn to figure 13 of Deem reference, which shows a support structure that does not form a complete loop (see column 8, lines 8-17) which would be beneficial because the support structure does not obstruct as much of the lumen, thereby reducing the resistance to blood flow through the area in which the support structure is placed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the embodiment in

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figures 4 and 11B of Deem reference with the support structure that does not encompass the entire circumference of the lumen, as taught in figure 13 of the same reference, so as not to obstruct as much of the lumen, thereby reducing the resistance to blood flow through the area in which the support structure is placed.

7. Further regarding claim 23, Deem reference discloses substantially identical embodiments in figures 12 and 13, wherein the only difference is the fact that the end portions extend around the entire circumference of the lumen in figure 12 and do not in figure 13. This is further evidence that the support structure can perform equally well configured in either fashion and there would be no disadvantage to modifying the embodiment of figures 4 and 11B to have the end portions extend only about a portion of the circumference of the lumen.

8. Regarding claims 24 and 41, the arced configuration is curved and coiled (see figure 4).

9. Regarding claim 25, the configuration conforms to the lumen it is placed in (see figure 11B).

10. Regarding claim 26, the support structure includes a sinusoidal body portion (elements 14 form a sinusoidal pattern, see figure 4).

11. Regarding claim 27, the sinusoidal pattern is only disposed in the bridge portion, which lies between the opposing ends of the support structure.

12. Regarding claim 28, the bridge portion includes the reactive material (102, see figure 4).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents 4,800,882 to Gianturco and 6,165,194 to Denardo both disclose structures similar to that of applicant.
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Severson whose telephone number is (571) 272-3142. The examiner can normally be reached on Monday - Friday 9:00 - 5:30.
15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Ryan Severson
May 16, 2007


ANH TUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER
